78-1644

In the Supreme Court of the United States

No. A-846

SAUL KANE, PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS FOR REVIEW OF THE JUDGMENT ORDER OF JANUARY 25, 1979, AFFIRMING THE JUDGMENT OF CONVICTION AND SENTENCE OF MAY 12, 1978 IN THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

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DISCUSSION OF LOWER COURT OPINIONS

The Petitioner raised four issues before the Third Circuit Court of Appeals. Those assigned errors were the following:

1. Whether application of the test for independent proof of the existence of a conspiracy and the membership of appellant KANE in that conspiracy in this Circuit would compel the Lower Court to conclude that the Government failed to meet the burden of proof aliunde.

2. Whether the absence of independent proof of a conspiracy should have required the Trial Court to strike all hearsay declarations of the co-conspirators along with evidence of the conduct of the co-conspirators outside the presence of appellant KANE or anything derived therefrom.

3. Whether the specific inflammatory evidence cited in issue 2, supra, was independently subject to being stricken from testimony under the applicable Rules of Evidence.

4. Whether the evidence that should properly have been admissible would sustain a conviction of the appellant SAUL KANE.

Though the Judgment Order of the Third Circuit entered January 25, 1979 (see Exhibit A, infra.) sets forth the four subdivisions of Petitioner's argument and recites the Court's decision to affirm the conviction, it is respectfully submitted that this ruling is unjust. The bases for Petitioner's request for review by this Court are first, the fact that the four assigned errors constituting the points of argument in Petitioner's Brief all result from different aspects of the improper admission of hearsay declarations by co-conspirators resulting in a <u>combined</u> prejudicial effect far greater from that of any single such error, and second, the fact that the Trial Court refused a proffered jury instruction by the defense at trial which might possibly have cured the effect of these hearsay declarations.

Though there are many assigned

points of error which the Petitioner submits were each independently grave enough to warrant reversal of a conviction in this case, all those bases for the appeal relate to but a single core issue and that is the question of whether there existed independent proof of a conspiracy which would warrant the admission into evidence of hearsay declarations by co-conspirators as well as testimony as to the conduct of the co-conspirators to prove the guilt of Petitioner SAUL KANE.

JURISDICTIONAL STATEMENT

Petitioner seeks review by this Court of the Judgment Order of the Third Circuit Court of Appeals dated 2/27/79 (reproduced infra.) affirming the judgment of conviction and sentence imposed on the defendant in the United States District Court for the District of New Jersey on May 12, 1978. The initial judgment of conviction arose from a two count indictment (Criminal No. 77-334) charging the defendant with membership in a conspiracy violative of The Hobbs Act (18 U.S.C.A. §1951 et seq.).

After denial of post-trial motions by the Court without opinion judgment of conviction and sentence was entered May 12, 1978, before the Honorable John F. Gerry in the District of New Jersey. Thereafter timely appeal was filed in the Circuit Court of Appeals of the Third Circuit and docketed at No. 78-1645 (certified copies of 3rd Circuit Docket Entries have been reproduced

infra., and all District Court Docket Entries, Transcripts and Pleadings appear at the appendix in the Petitioner's Brief in the 3rd Circuit Court of Appeals).

The Supreme Court's appellate jurisdiction in this matter rests upon 28 U.S. C.A. §1254 which reads in pertinent part:

> §1254. Courts of Appeals; certiorari,; appeal; certified questions
>
> Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By Wirt of Certiorari granted upon the Petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

STATEMENT OF QUESTIONS PRESENTED

I. WHETHER APPLICATION OF THE TEST FOR INDEPENDENT PROOF OF THE EXISTENCE OF A CONSPIRACY AND THE MEMBERSHIP OF PETITIONER KANE IN THAT CONSPIRACY WOULD COMPEL THE COURT TO CONCLUDE THAT THE GOVERNMENT FAILED TO MEET THE BURDEN OF PROOF ALIUNDE?

(Answered Negatively In The Courts Below)

II. WHETHER THE ABSENCE OF INDEPENDENT PROOF OF A CONSPIRACY SHOULD HAVE REQUIRED THE TRIAL COURT TO STRIKE ALL HEARSAY DECLARATIONS OF THE CO-CONSPIRATORS ALONG WITH EVIDENCE OF THE CONDUCT OF THE CO-CONSPIRATORS OUTSIDE THE PRESENCE OF PETITIONER KANE OR ANYTHING DERIVED THEREFROM INCLUDING:

A. The reference by Sandson to "Tony Pro";

B. The conclusary reference to "Bribe" in Sandson's diary;

C. Testimony by Witness Al Black as to prior consistent statements of Witness Sandson;

D. Testimony of Ginsberg regarding purportedly similar union organization attempts at his plant?

(Answered Negatively In The Courts Below)

III. WHETHER THE SPECIFIC INFLAMMATORY EVIDENCE CITED IN ISSUE II, SUPRA,

WAS INDEPENDENTLY SUBJECT TO BEING STRICKEN FROM TESTIMONY UNDER THE APPLICABLE RULES OF EVIDENCE, INCLUDING:

A. Since the reference to "Tony Pro" was irrelevant to the indictment's allegation of extortion by threat of economic harm;

B&C. Since the Sandson diary and the recollection of Sandson's statements by Witness Al Black contained evidence and conclusions beyond that which was necessary to countering a charge of recent fabrication;

D. Since the testimony of Ginsberg was beyond the scope of the evidentiary rule regarding prior acts of similar conduct?

(Answered Negatively In The Courts Below)

IV. WHETHER THE EVIDENCE THAT SHOULD PROPERLY HAVE BEEN ADMISSIBLE WOULD SUSTAIN A CONVICTION OF THE PETITIONER SAUL KANE?

(Answered in the Affirmative In The Courts Below)

V. WHETHER THE TRIAL COURT MAY PERMIT THE SELECTION AND EMPANELMENT OF A JURY AFTER EXTENSIVE VOIR DIRE BY COUNSEL AND EXERCISING OF APPROPRIATE CHALLENGES RESULTING IN THE SELECTION OF A PANEL INCLUDING ALTERNATES ONLY TO EXCUSE THE JURY SUA SPONTE BECAUSE THE COURT AND PROSECUTION WERE UNPRE-

PARED FOR TRIAL AND ULTIMATELY TO DISCHARGE THE JURY APPARENTLY BECAUSE THE MEMBERS HAD BEEN RETURNED TO THE BODY OF PROSPECTIVE JURORS AND PICKED AND SWORN FOR A DIFFERENT CRIMINAL CASE, SOLELY BECAUSE THE JURY WAS NOT SWORN PRIOR TO THE THREE WEEK RECESS ORDERED BY THE COURT?

(Not Reached By The Court Below Nor Raised By Trial Counsel)

SUMMARY OF FEDERAL STATUTES AND CONSTITUTIONAL PROVISIONS AT ISSUE IN THIS PROCEEDING

Essentially the prime source of authority which Petitioner asserts in support of his claim of error in the Trial is the Sixth Amendment to the United States Constitution. More particularly the Sixth Amendment guarantee of the right to confront accusatory evidence has been abridged in Petitioner's case as a result of his conviction's being based substantially on evidence in the form of extrajudicial hearsay declarations of co-conspirators, some of whom were never even identified.

In addition to the Sixth Amendment, there exists authority in the Federal Rules of Evidence to support the conclusion that the disputed hearsay declarations were admitted into evidence under circumstances not in compliance with the provisions of Rule 801(d)(2)(E). That Section of the Evidentiary Rules reads in pertinent part

as follows:

> Rule 801, Definitions:
>
> (d) Statements which are not hearsay. A statment is not hearsay if ...
>
> (2) Admission by party opponent ...
>
> (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

STATEMENT OF THE CASE

Petitioner seeks review of the Order of the Third Circuit Court of Appeals dated February 27, 1979 denying re-hearing of its January 25, 1979, Order affirming Judgment of Conviction and Sentence imposed in the United States District Court for the District of New Jersey, May 12, 1978. The procedural history of this action begins on September 19, 1977, when the Grand Jury for the District of New Jersey indicted Petitioner SAUL KANE with co-defendants James Plumley and Michael Clark on Bill No. 77-00334. The indictment charged the defendants with engaging in a conspiracy to extort money from the owner of Sandson Bakery Inc., a New Jersey firm, by means of the threat of financial or other injury in violation of the Hobbs Act (18 U.S.C.A. §1951). Specifically, Count I of the indictment alleged a conspiracy while Count II charged the defendants with attempting

the substantive Hobbs Act offense.

The Petitioner and his co-defendants were scheduled to begin trial on February 14, 1978. On that date counsel for the defendants conducted voir dire of the prospective jurors and ultimately picked a panel of twelve with four alternates. At the conclusion of the jury selection process when the jurors and alternates were first assembled before the Court, Judge Gerry, who presided at trial, excused counsel and jurors for an indefinite period of time until an Order from the Court scheduling commencement of trial. Though the record is silent on the reasons for empanelment of the jury without initiation of the trial, the procedure appears to be motivated by the fact that the prosecution and/or the Court was not prepared for commencement of proceedings before the jury.

On March 8, 1978, before Judge Gerry,

there was picked a panel of jurors and alternates to serve in the trial of a criminal case before Judge Gerry unrelated to the prosecution of the Petitioner and his co-defendants. Among the jurors and alternates picked to serve in that prosecution, were more than half of the panel that had been chosen on February 14, 1978, for the Petitioner's trial. Notwithstanding the fact that no Order had been entered of record since the date upon which these jurors were chosen to serve on the instant case, they along with other members of the jury were sworn before Judge Gerry with the intention of beginning the trial of that unrelated matter. Later on the same date, March 8, 1978, Special Attorney Peter Bennett of the Strike Force from Newark, New Jersey, appeared before Judge Gerry to move for a continuance of the trial date and discharge of the jury panel that had already been selected. The

stated reason for the request was that the United States felt that the identity of the fourth unidentified and unapprehended co-conspirator would soon be made known to the prosecutors and that development would permit trial of an additional defendant along with Petitioner and his two co-defendants. The continuance was granted and the initial jury was discharged with the result that a new jury was chosen after voir dire conducted on March 27, 1978.

Trial of the matter was conducted before Honorable John F. Gerry in Camden from March 27, 1978 to April 6, 1978 at which time the jury returned verdicts of guilty against the three defendants. After timely filing of post trial motions and a hearing conducted thereon on May 9, 1978, those motions were denied and thereafter Judge Gerry imposed a sentence of three years imprisonment concurrent on each of the two Counts as to Petitioner KANE on

May 12, 1978. KANE filed timely Notice of Appeal with the Clerk of the Third Circuit thereafter and his co-defendants did likewise (U.S. v. James Plumley docketed at 78-1646; U. S. v. Michael Clark docketed at 78-1644).

The conduct which gave rise to the indictment in this matter occurred in the latter part of February and early March, 1976, and involved the activities of the Petitioner and of two other individuals, co-defendants Plumley and Clark, with respect to union organizing attempts directed at the Sandson Bakeries located near the Jersey shore.

The Petitioner respectfully submits that all of the testimony may be characterized as falling into two categories: testimony as to the actual statements or conduct of the Petitioner SAUL KANE, and testimony of the conduct and statements of co-defendants Plumley and Clark along

with an unidentified co-conspirator. Taking the evidence in those two categories in a light favorable to the prosecution and even interpreting the evidence subject to every inference favoring guilt, the Petitioner respectfully submits that the only evidence inculpatory viz-a-viz Petitioner was the statements and conduct of the other defendants or of witnesses to the events in question. Essentially, the testimony most probative of KANE's guilt consisted of references by his co-defendants to "Tony Pro", a notorious racket figure, entries in the diary of Bernard Sandson referring to the possibility of a "bribe" sought by defendant KANE, statements by co-defendant Clark soliciting $12,000 from Sandson under a threat of potential violence, and many other statements and acts by witnesses and co-defendants probative of an attempt to extort money from certain large Jersey shore food producing firms

under threat of union difficulties of a costly and dangerous sort.

Notwithstanding the great bulk of evidence proving the existence of a plot to violate the Hobbs Act, by shaking down Sandson, Ginsberg, and others, there appears no evidence on the record reflecting any acts or statements by Petitioner SAUL KANE which would prove his knowledge of or participation in such a plot. Thus, the Petitioner concedes that the Government produced substantial proof of the Hobbs Act violation described in the indictment and further seeks to emphasize to this Court the fact that all of the assigned error in this appeal relates not to a contention that prosecution evidence was irrelevant or improper to prove the Hobbs Act violation described in the indictment but rather the failure of all the Government's proof of a Hobbs Act violation to support an inference that KANE, the Petitioner,

knew of the crime's existence and intended to be a party thereto.

SUMMARY OF ARGUMENT

Though there are many assigned points of error which the Petitioner submits were each independently grave enough to warrant reversal of a conviction in this case, all those bases for certiorari related to but a single core issue and that is the question of whether there existed independent proof of a conspiracy which would warrant the admission into evidence of hearsay declarations by co-conspirators as well as testimony as to the conduct of the co-conspirators to prove the guilt of Petitioner SAUL KANE.

Petitioner SAUL KANE submits, therefore, that the standard for review in this matter must be to assess whether the Trial Court properly applied the rule in this Circuit as enunciated in United States v. DeCavalcante (3d Cir., 1971) 440 F.2d 1264, 1275, requiring proof aliunde of a conspiracy's existence prior to the admission

against a Defendant of hearsay declarations of co-conspirators or evidence derived therefrom. Clearly, the independent evidence of conspiracy in this case is far less than the evidence which would have connected DeCavalcante to the criminal agreement at issue in that case. In fact, there exists in the entire record of this matter no direct or circumstantial evidence of any communication whatsoever between KANE and his co-defendants at the time of the Sandson incident, much less any proof of an agreement to shake down Sandson. Consequently, the Trial Court misapplied the test for proof aliunde with the primary result that hearsay declarations of co-conspirators were improperly admitted against KANE, KANE's requested jury charge regarding conspiracy were improperly denied and KANE's Motion in Arrest of Judgment and For New Trial claiming insufficiency of evidence to convict were also wrongfully rejected.

It is further contended that the failure to apply the proof aliunde test at the outset to determine whether independent evidence of conspiracy existed resulted in the erroneous admission of certain evidence which the co-defendants of KANE complained of for other legal reasons in their appeals. For instance, the reference to "Tony Pro" which defendant Plumley attacked as inflammatory and irrelevant is also objectionable since it was a statement by co-defendant Clark not in the presence of Petitioner SAUL KANE. Notations in Sandson's diary were objected to by Clark and Plumley as beyond the scope of the evidentiary rule applicable to prior consistent statements offered to overcome a charge of recent fabrication. Those diary entries also contained the statement "bribery" which conclusion Sandson conceded to be his own personal speculation about the meeting with Plumley and Clark at his office since Clark

and not KANE asked Sandson for money to quell his labor problems. Finally, the testimony of Ginsberg, the owner of another food production concern in the vicinity of Sandson regarding his dealings with Clark, Plumley and Kane also should have been stricken not only because it failed to meet the evidentiary requirements for prior similar conduct but more importantly because, to the extent that it was inculpatory, it contained the hearsay declarations of co-conspirators admitted without independent proof of the conspiracy.

The Petitioner respectfully submits that his co-defendants properly objected to the inflammatory and prejudicial characteristics of the various assignments of error. Nonetheless the Petitioner suffered in a unique and serious manner because those inflammatory remarks were all hearsay declarations by alleged co-conspirators and constituted absolutely the only evidence

of guilt against KANE. Thus, the combined effect of the four errors assigned by the Petitioner resulted in his being convicted on the basis of statements made by people whom we may conclude from the record he never met or otherwise communicated with.

The magnitude of this inequity is intensified by the Trial Court's refusal to permit a simple instruction to the jury that would have clarified the rule of DeCavalcante by unequivocally commanding the factfinder to make a determination on the issue of proof aliunde before wading into any hearsay declarations.

ARGUMENT

I. PROOF THAT AN INDIVIDUAL'S CONDUCT FURTHERED THE ILLEGAL OBJECTIVE OF A CONSPIRACY IS INSUFFICIENT TO CONSTITUTE THE "INDEPENDENT EVIDENCE" REQUISITE FOR ADMISSION OF HEARSAY DECLARATIONS WITHOUT PROVING THAT INDIVIDUAL'S INTENT TO FURTHER THE CRIMINAL OBJECTIVE.

Recent decisions by this Circuit's Court of Appeals repeatedly state that proof of an individual's conduct furthering an illegal conspiracy is insufficient to constitute the independent evidence of conspiracy necessary for admissibility of hearsay declarations without proof that the individual's conduct was consciously directed at the illegal objective with knowledge and intent to espouse the criminal agreement.

In the instant case, it must be borne in mind that there existed no evidence of conversations or conduct involving physical presence of his alleged co-conspirators or by phone such as to prove his membership

in the criminal conspiracy, either directly or by inference. It is conceded that the Petitioner did indeed call Sandson and Ginsberg, longtime business associates of his, to offer his assistance only and to ask nothing in return. Although KANE's intervention may have ultimately (one may speculate) provided a peaceful intermediary through which the alleged extortion conspirators could have succeeded in converting their threats into currency, this Circuit's decisions require that there must be evidence of KANE's knowledge and intent to assist in the illicit scheme.

Any doubt as to the impossibility of finding KANE independently to have been proved a conspirator will be dispelled by examination of the facts in United States v. DeCavalcante (3d Cir., 1971) 440 F.2d 1264, 1275, United States v. Palacios (5th Cir., 1975) 556 F.2d 1359 or United States v. Klein (3d Cir., 1975) 515 F.2d 751. In

each case, the Petitioner was absolutely instrumental to the successful accomplishment of the illegal aim of this conspiracy. Furthermore, in each case, the Petitioner was demonstrably more intimately related through passing of time and closeness of business and blood relationships to the conspirators than he was to his co-defendants. Nonetheless, convictions were reversed in each instance simply because the overt acts and statements of the defendants were always consistent with purely innocent motives, as were KANE's acts in this case. Without any doubt the Trial Court should have found insufficient independent proof of conspiracy where, as here, no piece of evidence inferred a wrongful intent by KANE, whose every act in this matter was for the stated purpose of offering to help his associates of many years standing, Sandson and Ginsberg.

II. ALL OF THE PROSECUTION EVIDENCE WHICH MAY HAVE BEEN INCULPATORY AS TO THE PETITIONER AND PARTICULARLY THAT EVIDENCE WHICH WAS MOST LIKELY TO PREJUDICE THE FACTFINDER AGAINST HIM WITHOUT EXCEPTION CONSISTED OF HEARSAY DECLARATIONS OF CO-CONSPIRATORS OR OTHER EVIDENCE WHICH TRACED DIRECTLY BACK TO SUCH HEARSAY DECLARATIONS FROM WHICH THAT EVIDENCE WAS DERIVED.

It is respectfully submitted that a review of those items of evidence that appear most highly prejudicial to the Petitioner shows them all to have consisted of hearsay declarations of co-conspirators. For example, the reference by Sandson to "Tony Pro" was the result solely of defendant Clark's characterization of himself as "the fair haired boy of Tony Pro". No testimony by the prosecution suggested that KANE ever referred to Tony Pro or any other racketeer in his conversations with Sandson.

The notation "bribe" in Sandson's diary is contained in the entry related to the witness' March 2, 1976, conversation with this Petitioner, SAUL KANE. But cross-

examination of Sandson revealed ultimately (see, e.g. 1034a of Appendix to Brief on Appeal) that the true source of the remark was co-defendant Clark whom the witness positively recalled to have solicited a bribe and not the Petitioner whom the witness positively recalled as demanding no such bribe. Likewise, witnesses Al Black and Morris Ginsberg testified to no incriminating facts other than those circumstances surrounding the conduct and statements of persons alleged to have conspired with this Petitioner. Logically, it is respectfully submitted, that if the foundation of proof aliunde for admission of co-conspirators' declarations is found to have been faulty, then so too, the evidence of criminal behavior in this case must be stricken as inapplicable to this Petitioner.

Consequently, the Trial Court committed reversible error in rejecting the proposed instruction submitted by counsel

for the Petitioner which would have cautioned the factfinder to consider no hearsay evidence without first determining the question of KANE's membership in the conspiracy.

III. THE TRIAL COURT MISAPPLIED PERTINENT PROVISIONS OF THE FEDERAL RULES OF EVIDENCE WITH THE RESULT THAT IN SEVERAL INSTANCES TERRIBLY PREJUDICIAL MATERIAL OF VIRTUALLY NO PROBATIVE VALUE WAS ADMITTED INTO EVIDENCE.

A. Although the reference to "Tony Pro" may or may not have been relevant to the elements of the offense charged in the indictment, its probative force was so remote and its prejudicial effect so incredibly strong in view of the person to whom the reference was made, that such evidence clearly should have been stricken under the provisions of Federal Rule of Evidence 403.

Counsel for the Petitioner objected at trial to testimony from Sandson that Clark described himself as "the fair-haired boy of Tony Pro". His objection would not rest only on the contention that the evidence was irrelevant to the proof of the crime charged though that issue was raised (185a-186a). More importantly, trial counsel for the Petitioner objected strenuously and repeatedly to this evidence as being so highly prejudicial and so barely relevant as to be properly stricken under the provisions

of Rule 403 of the Federal Rules of Evidence (183a0184a, 196a, 221a, and 461a).

It is respectfully submitted that the decision in United States v. Long from this 3rd Circuit's Court of Appeals decided March 6, 1978 on appeal from the Western District of Pennsylvania (3d Cir., 1978) _____ F.2d ___, required the Trial Court ruling on a question of excluding prejudicial evidence as being highly inflammatory required the Trial Court to set forth a reviewable standard for making the balancing test that Rule 403 requires. It is submitted that the Trial Court made no such defense of its permitting the "Tony Pro" reference while Petitioner's counsel argued with unassailable logic that the fact of Tony Pro's sudden ascendancy into national notoriety as the prime Hoffa suspect just before the trial date created an awesome degree of prejudice that the remote relevance of the remark could not possibly overcome.

B. The quotations from the Sandson diary should not have been admitted under Federal Rule of Evidence 801(d)(1)(B) because the cross examination by Petitioner's trial counsel was not aimed at demonstrating recent fabrication and the passages from the diary that were read, particularly the inflammatory ones, were not probative of prior consistency on the part of the witness.

The government was permitted in rebuttal to introduce into evidence extensive quotations from the diary kept by witness Sandson with respect to his notations regarding the telephone conversations with the Petitioner at or about the time of the conspiratorial acts alleged in the indictment. The rationale for admission was that counsel for the Petitioner had sought on cross examination to demonstrate that Sandson had recently fabricated his allegations of KANE's participation in the conspiracy. In fact, the cross examination in question occurs at 354a-366a in the Notes of Testimony from the third day of trial (March 29,

1978). The questions posed to Sandson sought to elicit from him a concession that he could not remember what Mr. KANE said to him during certain conversations, particularly the phone conversation of March 2, 1976, nor even whether KANE said anything to him regarding his union problem with Clark and Plumley. Moreover, the witness conceded that he could not remember anything about the conversations but the witness did persist in contending that the notation in his diary reflected the word "bribe" and he speculated that the remark related to statements from the Petitioner. Under these circumstances, it may be argued that the upshot of Petitioner's cross examination was to imply that Sandson had recently concocted his testimony regarding KANE's participation in the shakedown. But the remarks from Sandson's diary would still fail to comply with the requirements of

801(d)(1)(B) since by the admission of the witness, he was unable to state with certainty whether the source for the extraordinarily prejudicial and inflammatory notations such as "bribe" may have been some remark by KANE or may have been the result of statements made by someone else such as the two co-defendants or the unidentified co-conspirator. Moreover, the uncontradicted testimony by Sandson that Clark had indeed specifically requested a figure of $12,000 would support an inference that it was indeed Clark's words that resulted in the notation "bribe" which unfortunately for the Petitioner, was juxtaposed to the notation in the diary regarding his telephone call to Sandson on March 22, 1976. The proffered evidence from the diary in no way gainsayed the Petitioner's contention that the witness had recently fabricated a "recollection" of statements made to him by KANE and may

have even supported Petitioner's contention that the witness had no recollection of the content of those conversations, but the prejudicial effect of the word "bribe" must have been awesome to the jury and would, it is respectfully submitted, have warranted the exclusion of the testimony even if it had fallen within the hearsay exception adduced by the Government.

It should also be noted that two of the few other shreds of evidence that may have implicated KANE in the eyes of the jury should properly have been deemed inadmissible as to this Petitioner for reasons other than the hearsay rule applied to declarations of co-conspirators, which had already been discussed. Both the testimony of Al Black (698a et seq.) and Morris Ginsberg were in no way probative of KANE's wrongdoing but rather documented the fact that his involvement in the offense arose from innocent contact with the two

bakers who were purportedly subject to union harassment. Neither witness alluded to even a suspicion of improper motivation in the statements or conduct of the Petitioner, yet the failure of the Trial Court to strike their references to KANE from evidence for relevancy must surely have prejudiced the jury and created an unwarranted inference that KANE was somehow suspect. The failure of this evidence to be relevant results from the fact that KANE's conduct as related by Black or Ginsberg was in no way overtly probative of knowledge and intent to commit a crime just as no such criminal purpose could be inferred from Sandson's testimony about his conversations with the Petitioner.

IV. THE EVIDENCE THAT SHOULD PROPERLY HAVE BEEN ADMISSIBLE AGAINST THE PETITIONER WOULD HAVE BEEN INSUFFICIENT TO SUSTAIN A VERDICT OF GUILTY FROM A REASONABLE FACTFINDER EVEN APPLYING EVERY INFERENCE FAVORING THE PROSECUTION.

The Trial Court in this matter erroneously found the existence of independent proof of Petitioner KANE's membership in the criminal conspiracy with the result that the factfinder was permitted to base its deliberations regarding Petitioner upon hearsay and double hearsay statements originating from and communicated via co-defendants and witnesses with every motivation to lie. The result was contrary not only to the express provisions of cases like Palacios, DeCavalcante, and Klein regarding inadmissible hearsay declarations of co-conspirators, but it was in most respects a conviction based upon evidence otherwise inadmissible as irrelevant and prejudicial. It is respectfully submitted that viewing the record

without the evidence which grew from the misapplication of the test for membership in a conspiracy would support this Court in concluding that there existed insufficient proof to sustain a conviction.

V. WHERE THE TRIAL JUDGE ASSEMBLED THE JURORS AND, BEFORE EXCUSING THEM FOR AN INDEFINITE PERIOD UNTIL THE SCHEDULE OF COURT AND PROSECUTOR WOULD PERMIT THE BEGINNING OF TRIAL, JEOPARDY ATTACHED WHEN JUDGE GERRY CONCLUDED THE SELECTION PROCESS, ADMONISHED THE JURORS OF THEIR DUTIES TO REMAIN OPEN MINDED AND TO AVOID INFLUENCES THAT WOULD BIAS THEIR DELIBERATIONS AND THE COURT MAY NOT UNDERMINE THE ENTIRE DOUBLE JEOPARDY PRINCIPLE BY THE FACILE TECHNIQUE OF INTENTIONALLY NOT CONDUCTING THE FORMAL SWEARING IN OF THE PANEL.

All of the recent cases that have defined the point at which jeopardy attaches have emphasized the point at which the jurors take on responsibility for rendering a verdict and deliberating for that purpose according to the various statutory and Constitutional protections afforded the accused. The empanelment, assembling, or otherwise effecting the jurors to assume the responsibilitys of factfinder for a particular prosecution is what triggers double jeopardy and not the mere formal oath, Crist v. Bretz, ___ U.S. ___. 98 S.Ct.

___, 57 L.Ed. 2d 24 (1978) and Downum v. United States, 372 U.S. 734, 10 L.Ed. 2d 100, 83 S.Ct. 1033. Any other conclusion would logically imply that perjurors, corrupt jurors, or any other citizen bound by duty and law to perform public service could brazenly cheat or lie should some clerical oversight result in his not being formally sworn in or even should the oath administered to him be incorrect in some minute respect.

Respectfully submitted,

Robert F. Simone

ROBERT F. SIMONE, ESQUIRE

James T. Vernile

JAMES T. VERNILE, ESQUIRE

Counsel for Petitioner

1) Unless you find that the government has proven to your satisfaction beyond a reasonable doubt* that any defendant intentionally entered into an agreement to commit an illegal act, which determination must be made without regard to testimony of acts of co defendants you are not to consider the testimony as to acts of the co-defendants against the defendant who has not been proven to have entered into the agreement. FRE 801 d 2E

(2)* If unacceptable substitute "by a preponderance of the evidence"

(3) " by clear & convincing evidence

(4) " by ~~prima~~ presenting a prima facie case"

JUDGMENT ORDER OF JANUARY 25, 1979 AFFIRMING CONVICTION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1645

UNITED STATES OF AMERICA,

Appellee,

v.

KANE, SAUL,

Appellant.

Appeal From The United States District Court for the District of New Jersey
D.C. Crim. No. 77-00334-02

Submitted Under Third Circuit Rule 12(6)
on January 8, 1979

Before HUNTER, GARTH, Circuit Judges, and LAYTON*, District Judge

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*Honorable Caleb R. Layton, 3rd, United States District Judge for the District of Delaware, sitting by designation

JUDGMENT ORDER

After consideration of all contentions raised by appellant, to wit, that the court erred:

1. in failing to apply recent decisions by this Circuit's Court of Appeals which repeatedly state that proof of an individual's conduct furthering an illegal conspiracy is insufficient to constitute the independent evidence of conspiracy necessary for admissibility of hearsay declarations without proof that the individual's conduct was concisely directed at the illegal objective with knowledge and intent to espouse the criminal agreement;

2. in failing to find that all of the prosecution evidence which may have been inculpatory as to this appellant and particularly that evidence which was most likely to prejudice the fact-finder against him without exception consisted of hearsay declarations of co-conspirators or other evidence which traced directly back to such hearsay declarations from which that evidence was derived;

3. in misapplying pertinent provisions of the Federal Rules of Evidence with the result that in several instances terribly prejudicial material of virtually no probative value was admitted into evidence;

4. in refusing to grant a motion of

acquittal because the evidence that should properly have been admissible against the appellant would have been insufficient to sustain a verdict of guilty from a reasonable factfinder even applying every inference favoring the prosecution;

It is ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

s/ James Hunter, III
James Hunter, III, Circuit Judge

Attest:

s/ M. Elizabeth Ferguson

Chief Deputy Clerk

Dated:
January 25, 1979

ORDER DENUING RE-HEARING DATED FEBRUARY 27, 1979

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 78-1645

UNITED STATES OF AMERICA

v.

SAUL KANE

SUR PETITION FOR REHEARING

Present: HUNTER, GARTH, Circuit Judges,
LAYTON, District Judge

The petition for rehearing filed by Appellant, Saul Kane, in the above entitled case having been submitted to the judges who participated in the decision of this court ~~and to all the other available circuit judges of the circuit in regular active service~~, and no

judge who concurred in the decision having asked for rehearing, ~~and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc~~, the petition for rehearing is denied.

By the Court,

s/ James Hunter, III
James Hunter, III
Circuit Judge

Dated: February 27, 1979

DOCKET ENTRIES IN 3RD CIRCUIT COURT OF APPEALS

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

1-1645
44

CASE NO. 78-1645

DATE 1978	FILINGS—PROCEEDINGS	Filed
May 31	Copy of Notice of Appeal, received May 22, 1978, filed.	
	Record, received May 24, 1978, filed. Trans of 9/29/77 arraignment filed 11/9/77; TRANS OF TRIAL (10 VOLS:) FILED 5/11/78 (filed with record in No. 78-1644) (See also record filed in No. 78-1646)	
	Order (Clerk) directing that if the transcript is desired and has not been filed, it shall be ordered forthwith, with the proper arrangements for payment to be made; directing the court reporter to make available the transcript to counsel for appellant within 5 days of the date of ordering and completion of payment arrangements or within 5 days of the date of this order, whichever is later; directing appellant's brief and the appendix be filed and served within 30 days of the availability to him of the transcript of the proceedings in the DC, or within 30 days of the date of this order, whichever is later; directing appellee's brief	

	be filed and served within 21 days after appellant's brief and the appendix are filed and served and directing the Clerk of the DC to deliver a copy of this order to the court reporter, filed.
	Certified copy of above order to C of DC and Ct. Rep.
	Exhibits, received May 24, 1978, filed. (Covers 78-1644/45/46)
June 9	Appearance of Robert F. Simone and James T. Vernile, Esqs. for appellant, filed.
June 9	Appearance of Maryanne T. Desmond, Esq. for appellee, filed.
Aug. 2	First Supplemental Record (No. 12 - Transcript of sentence of 5/12/78 filed in D.C. 7/31/78), filed.
Aug. 18	Consent motion by appellant for leave to extend time to file brief and appendix to September 30, 1978, filed. (4 cc.). Certificate of service attached.
Aug. 23	Above consent motion granted. NO FURTHER EXTENSIONS FOR ANY REASON. M. Elizabeth Ferguson, Acting Clerk.
Oct. 2	Appendix (Vols. I through V), filed. (4 cc.).
Oct. 2	Certificate of service of appellant's brief and appendix by mail on October 2, 1978, filed.
Oct. 2	Brief for appellant, rec'd October 4, 1978, filed. (25 cc.).
Oct. 4	Certificate of service of appellant's brief and appendix by mail on October 2, 1978, filed.
Oct. 27	Consent motion by appellee for leave to file a consolidated brief and for leave to extend time to file its brief to November 17, 1978, filed. (4cc) Service attached. (Covers 78-1644/6)

Oct. 30	Above consent motion denied as presented. Time is extended to November 10, 1978 to file appellee's consolidated brief. No further extensions. Clerk. (Covers 78-1644/6)
Nov. 13	Brief for appellee, rec'd November 15, 1978, filed. (25 cc.). (Covers 78-1644/5/6).
Nov. 16	Certificate of service of appellee's brief by mail on November 13, 1978, filed. (Covers 78-1644/5/6).
Dec. 28	Order (Hunter, C.J.) directing case be submitted pursuant to Rule 12(6), filed. (Covers 78-1644/6)
1979	
Jan. 8	Submitted on briefs. Coram: Hunter and Garth, C.J. and Layton, D.J. (Covers 78-1644/6)
Jan. 25	Judgment Order (Hunter and Garth, C.J. and Layton, D.J.*) affirming the judgment of the district court, filed. * Honorable Caleb R. Layton, 3rd, U.S. District Judge for the District of Delawre, sitting by designation.
Feb. 8	Petition for rehearing before original panel by appellant, filed. Service attached.

CERTIFICATE OF SERVICE OF THE PETITION FOR CERTIORARI PURSUANT TO RULE 33 OF THE RULES OF THE UNITED STATES SUPREME COURT

ROBERT F. SIMONE, Esquire and JAMES T. VERNILE, Esquire, being duly sworn according to law, depose and say that they are counsel for the Petitioner, as well as members of the Bar of the United States Supreme Court, and that copies of said Petition for Certiorari were served by depositing them in the United States mail, with first class postage, addressed as follows:

Maryanne T. Desmond, Esquire
Assistant U.S. Attorney
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Peter B. Bennett, Esquire
Assistant U.S. Attorney
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970 Broad Street
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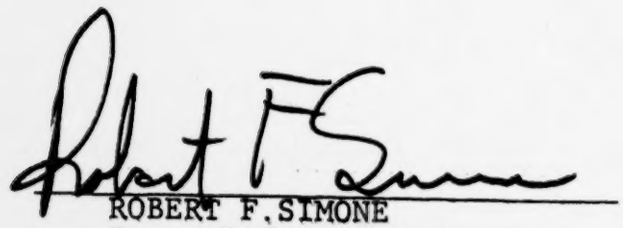
Wade H. McCree, Jr.
Department of Justice
Office of the Solicitor General
Washington, D.C. 20530



ROBERT F. SIMONE
Counsel for Petitioner
SAUL KANE

Member, U.S. Supreme Court Bar.

No. 78-1644

In the Supreme Court of the United States

OCTOBER TERM, 1978

SAUL KANE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General

PHILIP B. HEYMANN
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SAUL KANE, PETITIONER

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The judgment order of the court of appeals (Pet. App. 43-45) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1979. A petition for rehearing was denied on February 27, 1979 (Pet. App. 46-47). On March 28, 1979, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to April 28, 1979. The petition was filed on April 30, 1979, and is therefore out of time under Rule 22(2) of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the admission of out-of-court statements of petitioner's co-conspirators, including a reference to a reputed organized crime figure, constituted reversible error.

2. Whether the district court improperly admitted prior consistent statements of a government witness.

3. Whether petitioner was placed twice in jeopardy on the same charges.

STATEMENT

After a jury trial in the United States District Court for the District of New Jersey, petitioner and co-defendants Michael Clark and James Plumley were convicted of obstructing interstate commerce by extortion, in violation of the Hobbs Act, 18 U.S.C. 1951, and conspiracy to commit that offense, in violation of 18 U.S.C. 371. Petitioner was sentenced to concurrent terms of three years' imprisonment. The court of appeals affirmed (Pet. App. 43-45).

The evidence showed that petitioner and his confederates engaged in a scheme to extort $12,000 from Bernard Sandson, the proprietor of Sandson's Bakery in McKee City, New Jersey. Petitioner initiated this effort by calling Sandson on February 14, 1976, and telling him that he had learned of a union organizing effort about to be launched against Sandson's firm.[1] Petitioner added that Sandson could call him if he could be of any assistance (Tr. 2.55).

[1]Sandson knew petitioner as a salesman for a local bakery supply firm (Tr. 2.52-2.53).

On February 26, 1976, Sandson was visited by Clark and Plumley, who posed as organizers for the Eastern Conference of Teamsters (Tr. 2.64-2.66, 2.70).[2] They told Sandson that a union organizing effort at his bakery would start on March 1, 1976 (Tr. 2.67). Sandson, who was scheduled to be out of town on that date, asked them to postpone their picketing. Clark and Plumley refused but did agree to meet with Sandson again later that day (Tr., 2.68).

At the second meeting, held on a street corner in Phiadelphia (Tr. 2.71), Clark informed Sandson that his superiors had rejected any delay in the organizing drive (Tr. 2.71-2.72). He added that he was a "fair-haired boy of Tony Pro"[3] and was "out to make a name for himself" (Tr. 2.72). Sandson, aware of Provenzano's reputation for violence, immediately became afraid for himself and his business (Tr. 2.87). Before terminating this short meeting, Clark warned Sandson to be prepared for the organizers on March 1 (Tr. 2.72).

Sandson, recalling his earlier conversation with petitioner, telephoned petitioner the next day and asked whether he could help delay the organizing drive until Sandson returned home, on March 2 (Tr. 2.87). Petitioner

[2]Clark and Plumley were members of Teamsters' Local 107, located in Philadelphia, but they were not employed as organizers for either the Local or the Eastern Conference.

[3]This was an apparent reference to Anthony Provenzano, an individual connected with the Teamsters' union and with labor racketeering charges involving that union. See *United States* v. *Giacalone*, 541 F. 2d 508 (6th Cir. 1976) (en banc); *United States* v. *Provenzano*, 334 F. 2d 678 (3d Cir.), cert. denied, 379 U.S. 947 (1964).

called back the following day, February 28, and told him that he had secured a postponement of the union's effort (Tr. 2.88).

Sandson returned home on March 2 and was contacted by petitioner, who said that the matter could be "straightened out" (Tr. 2.90). Sandson took this to mean that he would have to pay some money to avoid having his business organized (*ibid.*). The next day, Clark and Sam Consiligia came to the bakery and confronted Sandson, telling him that an organizing effort would only make problems for Sandson's business (Tr. 2.91-2.92, 3.37-3.38). After Clark left the office, Consiligia offered Sandson two years of labor peace in return for a payment of $12,000 (Tr. 3.39). He suggested that Sandson think over the offer and call petitioner to report his decision (Tr. 3.40).

Sandson considered the proposal but decided to reject it. On March 4 he called petitioner and told him that he was not interested in the "arrangement" (Tr. 3.42). Sandson never heard from any of the defendants thereafter (Tr. 3.45).

ARGUMENT

1. Petitioner contends (Pet. 24-29) that the evidence of his participation in the conspiracy, independent of the statements of his co-conspirators, was insufficient to support admission of the statements. The court of appeals correctly rejected this claim. The record clearly reflects that the evidence *aliunde* was sufficient to allow

introduction of the statements under Fed. R. Evid. 801(d)(2)(E), the co-conspirator exception to the hearsay rule.[4]

The evidence showed that petitioner first alerted Sandson to the upcoming union organizing campaign and offered his assistance. Shortly thereafter, Sandson was visited by petitioner's co-defendants and informed that they would be organizing his bakery. When Sandson sought to have this campaign postponed for a few days, a call to petitioner was enough to halt the organizing effort. And during a subsequent call from petitioner, in which he told Sandson that the matter could be "straightened out," Sandson began to realize that a simple payoff might guarantee him labor peace. After being approached by others with a payoff request, Sandson telephoned petitioner and told him that he refused to agree to the "arrangement." The organizing effort never materialized. In sum, substantial non-hearsay evidence, together with petitioner's own statements to Sandson, provided sufficient proof of his participation in the conspiracy to

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[4]The circuits have applied varying standards—"prima facie" showing, "preponderance of the evidence," "substantial, independent evidence"—in determining whether the independent evidence of a defendant's participation in a conspiracy is sufficient to warrant admission of co-conspirator statements against him. See, *e.g.*, *United States* v. *James*, 590 F. 2d 575, 581 & n.4 (5th Cir. 1979) (en banc), cert. denied, Nos. 78-1412, 78-6369 & 78-6431 (June 4, 1979); *United States* v. *Santiago*, 582 F. 2d 1128, 1133-1135 (7th Cir. 1978); *United States* v. *Stanchich*, 550 F. 2d 1295, 1297-1299 & n.4 (2d Cir. 1977). Petitioner does not contend that the result in his case would differ depending upon which of these standards is applied, and, in view of the strength of the independent evidence tending to prove petitioner's participation in the conspiracy here, this is not an appropriate vehicle for deciding what the standard should be.

make admissible the out-of-court statements made by his co-conspirators during the course and in furtherance of the conspiracy.[5]

Petitioner also argues (Pet. 28-29) that the trial judge erred in not instructing the jury to make its own initial determination respecting petitioner's participation in the conspiracy before considering the statements of his co-conspirators. Petitioner cites no authority to support this assertion. It is well settled under Fed. R. Evid. 104(a) that the admissibility of co-conspirators' statements is a question of law for the judge, not the jury. See, *e.g.*, *United States* v. *James, supra*, 590 F. 2d at 579-580 (collecting cases); *United States* v. *Enright*, 579 F. 2d 980 (6th Cir. 1978); *United States* v. *Bell*, 573 F. 2d 1040, 1043 (8h Cir. 1978).

2. Petitioner claims (Pet. 30-31) that Sandson's testimony concerning Clark's reference to "Tony Pro" was "highly prejudicial" and of only "remote relevance" and that the district court therefore erred in failing to exclude it under Fed. R. Evid. 403. The evidence was highly relevant, however, because Sandson's association of that name with incidents of violence was intended to make him fear that his business would be harmed if he did not accede to the conspirators' demands; indeed, Sandson

[5]Petitioner cites three cases (Pet. 25-26) that, he suggests, cannot be reconciled with a finding that the evidence in this case was sufficient to support admission of the co-conspirator statements. Two of the decisions were rendered by the same circuit in which this case was decided and thus would create no conflict among the circuits even if viewed as involving similar facts. The third, *United States* v. *Palacios*, 556 F. 2d 1359 (5th Cir. 1977), concerned a defendant in a drug conspiracy trial whose proven links to the drug transportation in question were much less direct than petitioner's involvement in the conspiracy here.

testified that it had precisely that effect. Proof that Clark had mentioned the name to Sandson thus would help establish the extortion element of a Hobbs Act violation—"the wrongful use of actual or threatened force, violence, or fear" to induce another to surrender property. See *United States* v. *Zito*, 467 F. 2d 1401, 1404 (2d Cir. 1972); 18 U.S.C. 1951(b)(2). Accordingly, any prejudicial effect of the statement was outweighed by its probative value, and the trial judge did not abuse his discretion in admitting it into evidence. See, *e.g.*, *United States* v. *Bohr*, 581 F. 2d 1294, 1299 (8th Cir. 1978), cert. denied, No. 78-5493 (Nov. 6, 1978); *United States* v. *Calvert*, 523 F. 2d 895, 908 (8th Cir. 1975), cert. denied, 424 U.S. 911 (1976).[6]

3. Petitioner contends (Pet. 32-36) that prior consistent statements of a government witness were improperly admitted.

On cross-examination of Sandson, defense counsel sought to impeach him by suggesting that his testimony was a recent fabrication resulting from a strong anti-union prejudice. They elicited the facts that Sandson had not reported the defendants' extortion attempt to the authorities even though he had discussed it with his attorney (Tr. 3.63-3.65), that other unions had made unsuccessful attempts to unionize the bakery (Tr. 3.73-3.75), and that Sandson had not told a police detective or

[6]Petitioner's reliance on *United States* v. *Long*, 574 F. 2d 761 (3d Cir. 1978), cert. denied, No. 78-626 (Nov. 27, 1978), is misplaced. *Long* recognizes that a trial judge has broad discretion in deciding whether to exclude evidence under Rule 403 and that his decision to admit the evidence will be overturned on appeal only if it is arbitrary or irrational. *Id.* at 767. Here, of course, there was a rational basis for the trial court's action.

the grand jury of Clark's reference to "Tony Pro" (Tr. 3.62-3.63). The effect of this line of questioning was, as the district court concluded, "to question [Sandson's] credibility and [suggest a] recent fabrication" (Tr. 3.212).

Fed. R. Evid. 801(d)(1)(B) allows the admission of a prior statement consistent with a witness' testimony if it "is offered to rebut an express or implied charge against [the witness] of recent fabrication or improper influence or motive." In this case, petitioner's attack on Sandson's motive for testifying amounted to a clear suggestion that the testimony was such a fabrication. Hence, the court did not abuse its discretion in allowing Sandson, on re-direct, to refer to consistent statements, made in his daily diary, that tended to rebut the implied charge of fabrication. *United States* v. *Herring*, 582 F. 2d 535, 541 (10th Cir. 1978); *United States* v. *Lanier*, 578 F. 2d 1246, 1256 (8th Cir. 1978), cert. denied, No. 77-6967 (Oct. 2, 1978).[7]

[7]Petitioner further contends (Pet. 35-36) that testimony of Albert Black and Morris Ginsberg was improperly admitted. Black testified that Sandson called him immediately after Clark's and Consiligia's extortion effort and sought the services of Black's security guards to protect his bakery (Tr. 5.95-5.97). This testimony was admissible either as a prior consistent statement of Sandson's used to rebut petitioner's claim of recent fabrication or as evidence of Sandson's mental state (*i.e.*, fear) following his confrontation with Clark and Consiligia (Fed. R. Evid. 803(3)). Ginsburg's testimony related to a similar scheme that the defendants had used at his bakery to extort money in return for labor peace (Tr. 4.134-4.143). Fed. R. Evid. 404(b) authorizes the use of similar act testimony in order to establish intent or plan. See *United States* v. *Sparks*, 560 F. 2d 1173, 1175 (4th Cir. 1977); *United States* v. *Nolan*, 551 F. 2d 266, 271 (10th Cir.), cert. denied, 434 U.S. 904 (1977). Moreover, the trial judge minimized any prejudice that might have resulted from this evidence by cautioning the jury that the testimony was admitted for the limited purpose of showing petitioner's intent (Tr. 8.45). *United States* v. *Robinson*, 560 F. 2d 507, 516 (2d Cir. 1977) (en banc), cert. denied, 435 U.S. 905 (1978).

4. Petitioner also contends (Pet. 39-40), in a claim not presented to the court below (see *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977)), that he was placed twice in jeopardy on these charges. As petitioner acknowledges (Pet. 12, 39), the first jury panel was selected, but not sworn, prior to being dismissed. It is well established that jeopardy does not attach until the jury has been both empaneled and sworn. *Crist* v. *Bretz*, 437 U.S. 28, 35 (1978); *Serfass* v. *United States*, 420 U.S. 377, 388 (1975).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

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Attorney

JUNE 1979

DOJ-1979-06